

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,738
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a thirty-two-year-old man with a 9th grade education. He has worked in factories and as a school janitor. He has not worked since April, 1990.

The petitioner has a history of alcohol abuse, depression, and erratic behavior. A psychologist familiar with the petitioner opined that medication therapy will be necessary to decrease the petitioner's "depressive symptoms", and to "normalize" his attention, concentration, persistence, and pace". In a letter dated September 24, 1991, the psychologist followed up with the following report:

It was my recommendation that [petitioner] receive Medicaid to enable him to obtain the on-going treatment he requires to alleviate his chronic depression.

I strongly recommended that he participate in a therapeutic relationship combined with a pharmacological intervention to reduce his symptoms. I believe [petitioner] will not be employable until he receives individual therapy in addition to anti-depressant medication and cannot do this without Medicaid.

The Department (D.D.S.) concluded that the petitioner's impairment is severe enough to prevent him from working "at present", but that it was not expected to last twelve consecutive months. There is no evidence, however, that the therapy deemed necessary to improve the petitioner's level of functioning (see supra) is available to the petitioner without Medicaid. Moreover, it is clear from the evidence that the petitioner's problems are long-standing. He has not worked for more than a year. The preponderance of evidence establishes that his present condition has already lasted the requisite twelve months.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

As noted above, the Department concedes the severity of the petitioner's impairment. Based on the above findings, it is concluded that the petitioner also meets the

durational requirements of the above definition. Therefore,
the Department's decision is reversed.

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